

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-077-10082R

Parcel No. 241/00600-005-000

Anthony Dunsky Sr.,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 13, 2020. Anthony Dunsky Sr. was self-represented. Assistant Polk County Attorney David Hibbard represented the Board of Review.

Anthony Dunsky Sr. owns a residential property located at 5120 NW 66th Avenue, Johnston, Iowa. Its January 1, 2019, assessment was set at \$197,000, allocated as \$46,000 in land value and \$151,000 in building value. (Ex. B).

Dunsky petitioned the Board of Review writing in the section indicating an error in the assessment, but it appears his overarching claim related to the property's market value, essentially contending the property was assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(2) (2019). The Board of Review denied the petition. (Ex. B).

Dunsky then appealed to PAAB reasserting his claim.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Findings of Fact

The subject property is a one-story home built in 1989. It has 1242 square feet of gross living area, 600 square feet of low-quality basement finish, an open porch, a deck, and a two-car attached garage. The improvements were listed in normal condition with a 4+00 Grade (average quality). The site is 0.248 acres. (Ex. A).

Dunsky testified he is retired and he would like to update his home but is unable to afford to do so. He explained the property currently has deferred maintenance items including the roof, siding, paint, flooring, and deck. He believes that his property's value has been unfairly increased despite lacking updates because neighboring homes have been improved.

In support of his claim, Dunsky submitted a CMA of the subject property completed by Dave White of RE/MAX Real Estate Group, Des Moines. (Ex. 1). The CMA was prepared on September 26, 2019, and relies on three 2017 sales, four 2018 sales, and one 2019 sale. The sale prices ranged from \$197,500 to \$234,000, with an average sale price of \$216,600.

The following table summarizes White's comparables. (Ex. 1).

Address	City	Gross Living Area (SF)	Basement Finish	Sale Date	Sale Price
Subject	Johnston	1333	600	NA	NA
1 – 7089 Hickory Ln	Urbandale	1200	1000	12/2018	\$197,500
2 – 2700 71st St	Urbandale	1776	0	8/2019	\$208,900
3 – 1814 5th St	Altoona	1328	1200	12/2017	\$210,000
4 – 4768 Lockner Dr	Urbandale	1056	0	11/2017	\$210,000
5 – 1218 65th St	West Des Moines	1292	0	7/2018	\$212,000
6 – 4807 68th St	Urbandale	1169	765	12/2018	\$230,000
7 – 905 SE Dolan Dr	Grimes	1296	1050	11/2017	\$230,000
8 – 5473 Dakota Dr	West Des Moines	1260	0	7/2018	\$234,000

All of the properties were located in different cities but Sales 1, 4, and 6 are in the same school district as the subject. All are similar one-story homes with two-car garages built between 1984 and 1993. The properties range in size from 1056 to 1776, with Dunsky's property falling in the middle of this range at 1333 square feet. The property closest in size appears to be located the farthest away in Altoona. Sales 2, 4, 5, and 8 have no basement finish, whereas the remaining properties and subject property do have varying amounts of finish. White did not adjust the sales for the numerous differences between them and the subject property. The lack of adjustments hinders our ability to deem these properties sufficiently comparable to the subject.

White did indicate the subject is in poor condition with deferred maintenance to the roof, chimney, deck, exterior siding, exterior and interior paint, and carpeting. He concluded a repaired sale price for the subject between \$215,000 and \$230,000, and an "as is" estimated sale price of "\$170,000 or less." White admitted he is not a contractor and suggested getting bids from contractors for needed repairs to assist in determining the "as is" value.

Polk County Chief Deputy Assessor Amy Rasmussen testified on behalf of the Board of Review. Rasmussen noted there were no adjustments made to the sale prices

in the CMA. The Board of Review also disagrees with White's opinion that the property is in poor condition and contends it is instead in below-normal condition.

She indicated an appraiser from the Assessor's Office inspected the subject property in December 2019. As a result of the December inspection, the appraiser suggested lowering the condition rating to below-normal which would increase the amount of physical depreciation applied to the property to 24%. The change would result in a value for the subject of \$184,200. (Ex. E).

Rasmussen testified the December inspection confirmed the subject's condition should be below-normal and insisted the condition was consistent with the condition definitions in the Polk County Residential Procedures Manual. (Ex. D). Upon PAAB's request, the Board of Review submitted a revised cost report for the subject property reflecting its value in below-normal condition. (Ex. E).

Analysis & Conclusions of Law

Dunsky contends the subject property is over assessed as provided under Iowa Code section 441.37(1)(a)(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market distortion. *Id.*

In protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation. Iowa Code §441.21(3)(b)(2) (2019). To be competent

evidence, it must “comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782 (citations omitted).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm’s-length sale of the property. *Id.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 779 (Iowa 2009); *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W. 2d 594, 597 (Iowa 1990). The Iowa Supreme Court has held that market-value testimony by a taxpayer’s witness is “competent” only if the properties upon which the witness relied for their opinion were comparable. *Soifer*, 759 N.W.2d at 782. “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.” *Id.* at 783 (citing *Bartlett & Co Grain*, 253 N.W.2d 86, 94 (Iowa 1977)). The requirement that evidence be competent “does not mean that it must be credible.” *Id.* at 784 (citing *Johnson v. Iowa Dist. Ct.*, 756 N.W.2d 845, 850 n.4 (Iowa 2008)). “When sales of other properties are admitted, the market value of the assessed property must be adjusted to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments.” *Id.* at 783.

Here, the Board of Review acknowledged, after inspecting the subject property, that it is incorrectly listed in normal condition and therefore essentially concedes the property is over assessed. PAAB must therefore determine what evidence is the most persuasive indication of value for the subject property as of the assessment date.

Dunsky submitted the White CMA. For the reasons set forth above, we conclude the unadjusted sales are not reasonably comparable to the subject property. Moreover, we question the estimated costs for improving the property for sale, as White admits he is not an expert in this area. Conversely, the Board of Review recommends correcting

the property's condition to below-normal, which results in an indicated assessed value of \$184,200 as of January 1, 2019.

Ultimately we find the Board of Review's evidence is more reliable than the conclusions reached by the CMA. Viewing the record as a whole, we find the subject property is over assessed.

Order

PAAB HEREBY MODIFIES the Polk County Board of Review's action to \$184,200.

Based on the foregoing, we find the subject property's January 1, 2019, assessed value be set at \$184,200, allocated as \$46,000 in land value and \$138,200 in dwelling value. The subject property's cost worksheet should be changed to reflect the property's Below-Normal condition.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order¹ and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2019).



Dennis Loll, Board Member



Karen Oberman, Board Member



Elizabeth Goodman, Board Member

Copies to:

Anthony Dunskey Sr.
5120 NW 66th Avenue
Johnston, IA 50131

Polk County Board of Review by eFile

Polk County Auditor
111 Court Ave, Rm 230
Des Moines, IA 50309

¹ Due to the State Public Health Disaster Emergency caused by the coronavirus (COVID-19), the deadline for filing a judicial review action may be tolled pursuant to orders from the Iowa Supreme Court. Please visit the Iowa Judicial Branch website at <https://www.iowacourts.gov/iowa-courts/supreme-court/orders/> for the most recent Iowa Supreme Court orders.